GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15831 of the Methodist Home for the District of Columbia, pursuant to 11 DCMR 3108.1, for special exceptions under Sections 218 and 219 to allow an addition to a community residence and health care facilities in an R-1-A and R-5-D District at premises 4901 Connecticut Avenue, N.W. (Square 2033, Lot 16).

HEARING DATES: July 21 and September 22, 1993
DECISION DATES: October 6 and 14, 1993 and September 7, 1994

DISPOSITION: The Board **GRANTED** the application with **CONDITIONS** by a vote of 3-1 (Carrie L. Thornhill and Paula L. Jewell to grant; Sheri M. Pruitt to grant by absentee vote; Angel F. Clarens opposed to the motion). On September 7, 1994, the Board **DENIED** a request for **RECONSIDERATION** by a vote of 5-0 (Maybelle Taylor Bennett, Susan Morgan Hinton, Laura M. Richards and Angel F. Clarens to deny; Craig Ellis to deny by absentee vote).

FINAL DATE OF ORDERS: May 27 and September 26, 1994

ORDER GRANTING STAY

The Board granted the application by its order dated May 27, 1994. The order states that it will remain effective for six months from the final date of the Order, which is November 27, 1994, unless the applicant files for a building permit on or before that date.

On October 31, 1994, a petition for review was filed in the D.C. Court of Appeals in Case No. 94-AA-1407. Petitioners were opponents to the Methodist Home seeking review of the Board's decision in the application. The Methodist Home seeks to have the Board stay the running of the six month period until after the court's decision in the appeal has been made.

The applicant argued that the motion for a stay should be granted based on a memorandum dated December 14, 1997 from the Office of the Corporation Counsel addressing the issue of whether the filing of a petition for review operated to toll the running of the six month time period.

The memorandum concludes that "the running of the six-month period for applying for a building permit under a BZA decision is tolled by the filing and pendency of: **(a)** a motion for reconsidera- tion, rehearing or reargument.... or **(b)** a petition for judicial review."

The applicant stated that the opinions of the Corporation Counsel "in the absence of specific action by the Commission or Council to the contrary or until overruled by controlling court decision, shall be the guiding statement of law, to be followed by all District officers and employees in the performance of their official duties." See Reorganization Order No. 50, June 26, 1953, as amended, D.C. Code, Title I at 180 (1973).

The applicant maintains that the opinion of the Corporation Counsel has been consistently followed by the District of Columbia since its issuance. While the issue has been raised in the D.C. Court of Appeals in French v. the District of Columbia Board of Zoning Adjustment, 92-AA-1064, no decision had been made at the time of the motion.

The applicant also pointed out that as a result of the question raised in French v. the District of Columbia Board of Zoning Adjustment, the Zoning Commission, in Case No. 94-10, considered an amendment to the Zoning Regulations that directly addresses this issue by providing for automatic tolling in the event of an appeal of a BZA Order. Although the Zoning Commission voted to adopt the text amendment, the Zoning Commission had not yet issued a written order at the time of this motion.

Since the Zoning Commission had not taken final action on the text amendment, the applicant moved for a stay of effectiveness of Board's Order until the final disposition of the pending appeal.

No other parties submitted responses to the motion.

Upon consideration of the motion, the procedural posture of the case and the state of the law on this issue, the Board concludes that for purposes of expediency, the motion should be approved. The Board is of the opinion that it would be a better use of administrative resources to avoid having the applicant return to the Board because the six-month period expired during the pendency of the appeal. Also, in light of the fact that the issue of automatic tolling has not been resolved by the courts, it would be prudent for the Board to stay its Order. Finally, the Board concludes that granting this motion would not be adverse to any party to this proceeding.

Therefore, the Board hereby **GRANTS** the **MOTION to STAY** the effectiveness of the Board's Order dated May 27, 1994 until the date of the Court of Appeal's decision in DCCA No. 94-AA-1407.

VOTE: 5-0 (Craig Ellis, Laura M. Richards, Maybelle Taylor Bennett, Susan Morgan Hinton and Angel F. Clarens to grant the stay).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Dobbins

MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: SEP 26 1997

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

app15831/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15831

As Director of the Board of Zoning Adjustment, I hereby certify and attest that on SEP 26 1997 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Allison C. Prince, Esquire
John T. Epting, Esquire
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W., Suite 1100
Washington, D. C. 20006

Reverend John C. Warren
Frank F. Mitchell
Methodist Home for D.C.
4901 Connecticut Avenue, N.W.
Washington, D. C. 20008

Douglas Mitchell, Chairperson
Advisory Neighborhood Commission 3F
4401 Connecticut Avenue, N.W., #401
Washington, D. C. 20008

Eunice Gross
Methodist Home for D.C.
4901 Connecticut Avenue, N.W.
Washington, D. C. 20008

Robert Sloan
1807 Huntscreek Run
Gambrills, Maryland 21054

J. Gordon Seymour, Esquire
Williams & Connolly
725 12th Street, N.W.
Washington, D. C. 2005-5901

Madeliene H. Dobbins

MADELIENE H. DOBBINS
Director

DATE: SEP 26 1997

attestation/kjw